

DT 00-223

**Investigation as to Whether Certain Calls are Local**

DT 00-054

**Independent Telephone Companies and Competitive  
Local Exchange Carriers - Local Calling Areas**

**Final Order**

**O R D E R    N O.    24,080**

**October 28, 2002**

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**I.    PROCEDURAL HISTORY AND BACKGROUND**

The New Hampshire Public Utilities Commission (Commission) opened this docket on October 6, 2000, to consolidate the investigation of the common issues related to local calling in New Hampshire raised in three separate dockets: DT 99-081/085 (*Internet Traffic Treated as Local Traffic Subject to Reciprocal Compensation*); DT 00-001 (*Implementation of Number*

*Conservation Methods*); and DT 00-054 (*Local Calling Areas between Independent Telephone Companies and Competitive Local Exchange Carriers*). The common issues in these dockets are the treatment of certain traffic as local and the inter-carrier compensation for carrying such traffic.

The Commission decided that using one consolidated docket to address the common issues would conserve and focus Commission resources; once the common issues were resolved, the three separate dockets would proceed more efficiently. Parties to each of the three dockets became parties to this consolidated docket. They include: Verizon New Hampshire (Verizon); Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Company, Inc., and Dixville Telephone Company (collectively referred to herein as the Joint Independent Telephone Companies or the Joint ITCs); Union Telephone Company; Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing); Global NAPs, Inc. (Global NAPs); AT&T Communications of New England (AT&T) on behalf of both AT&T Broadband and AT&T; WorldCom, Inc. (WorldCom); RNK Inc. d/b/a RNK Telecom (RNK); Conversent Communications of New Hampshire,

LLC (Conversent); and the Office of Consumer Advocate (OCA).

The question of treatment of certain calls as local must be understood in the context of how calls are routed, how they are rated, and how current network technologies, including the numbering system in use throughout the United States, the North American Numbering Plan (NANP), impact rating and routing. Under the NANP, a complete telephone number consists of an area code (NPA), a central office code (NXX) and the number, thus: NPA-NXX-XXXX. The NXX historically identified the geographical rate center. It was also used to determine call rating and routing, that is, the price of the call, the compensation for the call and the route for sending the call to its intended recipient. Local Exchange Carriers (LECs) obtain an NXX or, more commonly, a thousand-number block within an NXX, from the NANP administrator. (For the purposes of this order, NXX codes of ten thousand numbers and thousand-number blocks within an NXX will be called NXX blocks.) Assigned NXX blocks are listed in the Local Exchange Routing Guide (LERG) which is the database that provides instructions for routing and rating calls to each NXX block.

For routing purposes, the LERG identifies the delivery point for calls, i.e., the LEC's central office (CO) or Point of

Interconnection (POI). If the NXX does not have Local Number Portability (LNP) activated (as is typically the case for NXXs used by independent telephone companies and cellular companies), the LERG identifies where to route the call. If LNP is activated (typically, for Verizon and CLEC NXXs) the calling party's carrier must "dip" into the LNP database for specific routing instructions for each telephone number in the NXX block.

For rating purposes, NXXs are assigned to rate centers. A rate center is a specific location, identified by vertical and horizontal (V&H) coordinates within an exchange area, from which mileage measurements are determined for the application of rates. The rate center and the call delivery point are not always in the same geographic area. During rating, carriers compare the NXX codes of the caller and the called party to determine if the call will be rated local or toll. Thus, rating can only be done at the NXX level. Even though individual numbers in the same NXX block may terminate to different geographic areas, rating cannot treat those numbers differently.

When CLECs establish operations, they do not typically duplicate the legacy network, but rather establish a POI, usually with one switch, used to provide dial tone to many areas

of the state. This is accomplished using NXX blocks assigned to the various areas the CLEC wants to serve. All calls placed to these NXX blocks are delivered to the CLEC switch at the POI, and from there the CLEC delivers the calls to the called customers.

LECs can assign a telephone number in a location even if the customer has no physical presence in that location. Calls that physically terminate in a location other than the exchange area associated with the NXX used are known as Virtual NXX (VNXX) calls. Any individual telephone number in an LNP-capable exchange can be a VNXX number. The issues in this case center around the use of VNXX numbers.

The questions raised by the Parties and Staff about calls to VNXX numbers are (1) what jurisdiction the Commission has over these calls, and (2) whether the calls should be considered local calls in New Hampshire.

During the course of this proceeding, in December 2000, the parties and Staff filed a Stipulation of Facts. The Stipulation of Facts describes how calls are routed between LECs and the current compensation arrangements for local and toll calls.

Compensation for local calls varies from party to party. The ITCs and Verizon have mostly bill-and-keep<sup>1</sup> arrangements. As a result of the instant docket, the ITCs and the CLECs agreed to an interim bill-and-keep arrangement which was to have expired on April 16, 2001, but which has continued in place to date and for the duration of this proceeding. Most of the CLECs have existing interconnection agreements with Verizon, some of which define local traffic as calls that both originate and terminate within a given local calling area or expanded area service (EAS) area. For toll calls, inter-carrier compensation is implemented through access charges.

On April 15, 2002, the Parties filed a Glossary of Terms (Glossary). The Glossary defines foreign exchange (FX) service as an ILEC-only service that is furnished from an exchange other than that normally serving the area where the customer is located. FX service is a toll-substitute service, allowing callers in the "foreign" exchange to place calls to the FX customer, located outside the caller's local calling area, without a usage-sensitive charge. The called party (the FX subscriber) pays (on a flat-rate basis) the additional charges

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<sup>1</sup> Since the routing of a phone call may be done by many parties, each party is due compensation when its network is used to carry a call. Under bill and keep, the company billing the call keeps that compensation rather than paying it to other carriers.

that the calling party would otherwise have to pay to transport the call beyond the caller's local calling area to the exchange where the FX customer's premises are located. Compensation for FX calls is the same as it is for local calls.

Hearings were scheduled for April 11-13, 2001. However, the Commission granted a request to postpone the hearings to permit the exploration of settlement possibilities. When settlement was deemed improbable by Staff and the Parties, the Joint ITCs requested and were granted a Status Conference which was held at the Commission offices on January 16, 2002. After the Status Conference and subsequent Technical Session, the Commission issued Order No. 23,927 approving a Procedural Schedule for the consolidated dockets.

Following a period of discovery, hearings were conducted on April 15, 16, and 22, 2002. At the hearings, the Commission requested briefs be filed by June 7, 2002 on issues that included (1) whether the Commission has jurisdiction to decide the issues in dispute in these dockets, and (2) whether calls terminating outside the local calling area (FX-like calls) should be considered local.

On June 6, 2002, the Joint ITCs filed a Motion for Extension of Time to file briefs. The Commission granted the

request and established June 21, 2002, as the new deadline for filing briefs. Briefs were subsequently timely filed by Global NAPs, RNK, AT&T, the Joint ITCs, Verizon, Conversent, WorldCom, and BayRing. The OCA and Staff filed comments as well.

On June 23, 2002, Global NAPs filed a Motion to Strike Portions of Verizon's Post-Hearing Brief. Verizon responded by letter dated July 9, 2002.

By letter dated October 16, 2002, the Commission requested interested parties to file comments regarding federal preemption of state jurisdiction to establish a specific NXX within New Hampshire, rated local state-wide, for ISP-bound traffic. On October 23, 2002, Global NAPS, WorldCom, OCA, Verizon, and the ITCs filed comments, as did KMC Telecom V, Inc. (KMC), which had not previously participated in this docket. BayRing and Level 3 Communications, LLC (Level 3), filed joint comments. The New Hampshire ISP Association (NHISPA) prepared comments which reached the Commission on October 25, 2002.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Verizon**

1. Verizon does not address the jurisdiction issue.
2. Verizon argues that traffic that originates from a calling party in one local calling area and is delivered to a



called party in a different local calling area is toll traffic and should not be considered local traffic. By definition, Verizon maintains, a local call must originate and terminate in the same geographical location, since the industry currently depends on geographic identifiers (the NPA and NXX codes) in the ten-digit telephone number to determine both the call route and the proper customer and inter-carrier charges associated with the call. According to Verizon, VNXX traffic exchanged between ILECs and CLECs cannot be local traffic since the calls do not originate and terminate within the same physical local calling area. In support of its position, Verizon cites to decisions by the public utilities commissions of Florida, California, Connecticut, Illinois, Texas, South Carolina, Tennessee, Georgia, Maine, and Missouri. Those commissions agree, according to Verizon, that treating these calls as local calls forces participating carriers to provide free network transport without compensation and, at the same time, improperly levies unwarranted reciprocal compensation charges upon the incumbents. Originating carriers of VNXX traffic, argues Verizon, are entitled to carrier access charges for the transport and delivery of such traffic to terminating carriers and they should not pay reciprocal compensation to the CLECs.

Verizon disputes the CLECs' argument that VNXX traffic mirrors the FX service Verizon and other ILECs provide. Verizon contends that FX service is clearly an inter-exchange calling service and that customers are charged accordingly. Verizon assesses the FX subscribers additional monthly charges to cover the transport costs incurred for calling beyond the local calling area of the subscriber's physical location, that is, for Verizon's investment in interoffice transport and switching facilities.

Verizon maintains, furthermore, that its interoffice transport facilities, so used, constitute an actual physical presence within the foreign exchange where local service is provided. VNXX traffic, on the other hand, according to Verizon, involves no CLEC physical presence and CLECs obtain free transport from ILECs by deceiving the switches and billing systems into treating the call as local. ILECs unfairly receive no compensation for this service, Verizon argues, and, further, Verizon points out, the CLEC then bills the ILEC reciprocal compensation as if the call were local. Verizon asserts that this is an inherently unfair practice.

Verizon rejects Staff's proposed plan, characterizing it as an unsuccessful attempt at accommodating CLECs and ILECs

by first recognizing the toll nature of VNXX traffic but then offering CLECs a loophole to avoid paying for toll transport. Verizon stands by its basic premise that the location of the end user receiving the call determines the toll or local nature of the call. Verizon asserts that Staff's proposal blurs that fundamental distinction. According to Verizon, Staff also fails to take into account the potential abuses that widespread VNXX calling, for convergent voice or data traffic other than ISP-bound traffic, could engender.

Verizon believes that the potential abuse of the network by non-Internet users is likely, and there would be a substantial reduction in the incumbents' toll and access revenues. Verizon also believes that VNXX can be abused by the CLECs deliberately creating incremental traffic solely for the purpose of generating reciprocal compensation revenues.

Verizon argues that it should be allowed to charge CLECs for tandem transit service (TTS) for traffic that originates on one carrier's network (e.g., an ITC) and employs Verizon's access tandem switch for connections to the network of a third, terminating carrier (e.g., a CLEC). In such instances, Verizon states, neither the originating nor terminating caller is a Verizon customer and thus Verizon has no end user from whom

to recover its costs. Verizon argues that imposing on Verizon the TTS charges for such a call would be patently unjust and unreasonable: the cost-causers should bear the cost.

Verizon asserts that the loss of toll and access revenues imperils affordable local rates in New Hampshire. Revenues from toll services have been used to keep the price of basic local services at affordable levels. If all calls look like local calls by the use of VNXX, incumbent carriers will lose both toll and access revenues that contribute to affordable local basic service rates.

3. Verizon comments that it is not aware of any Federal impediment to the creation of a specific NXX code(s) for use as state-wide calling. However, Verizon questions whether such a state-wide NXX would conserve numbering resources, pointing out that a currently unused full NXX would have to be assigned for the purpose and the return of numbers from previously assigned codes may not be possible. Verizon also raises the issue of compensation, i.e., retail pricing, originating carrier compensation, and charges for transit, as well as enforcement.

**B. Joint ITCs**

1. The Joint ITCs argue that the Commission has jurisdiction to regulate calls to Internet service providers (ISPs), even if dialed as intraLATA toll calls. According to the Joint ITCs, no federal mandate, from either the FCC or the federal courts, prevents the Commission from exercising jurisdiction over intraLATA services and rates in New Hampshire. FCC and federal court decisions pertain only to ISP-bound traffic within the caller's local calling area, the Joint ITCs opine. They further argue that the FCC's order on remand in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Inter Carrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (April 27, 2001) (*ISP Traffic Remand Order*) only removes ISP-bound traffic from obligations under the Telecommunications Act of 1996 (TAct); it does not remove ISP-bound traffic from interstate or intrastate access regimes.

2. The Joint ITCs agree with Verizon that VNXX calls are not local and should not be treated as local. The unfair results of the use of VNXX, according to the Joint ITCs, include: (1) when an ITC customer originates a call to a CLEC VNXX, the ITC customer does not pay a toll charge for what Joint

ITCs believe should be a toll call; (2) the ITC does not receive originating exchange access charges; (3) the ITC pays reciprocal compensation charges; and (4) when the originating caller is an ITC customer, the ITC would be required to pay Verizon for transport service. In support of their contentions, the Joint ITCs provide decisions from the Maine Public Utilities Commission and the FCC. *Investigation into Use of Central Office NXXs by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs and Order Disapproving Proposed Service, Dockets No. 98-758 and No. 99-593, issued June 30, 2000.

Joint ITCs maintain that the use of VNXX results in lost revenue, increases in ITC customers' basic rates, and an expansion of ITC local calling areas without utilizing the approved process provided for by the Commission in N.H. Admin. Rules, Puc 410. In addition, Joint ITCs believe that VNXX calling also creates incentives to CLECs to obtain and waste vast resources of telephone numbers, contrary to the public interest. The Joint ITCs cite to the numbering resource arbitrage schemes addressed by the Commission in DT 00-001 and

by the New York Public Service Commission (NYPSC) in Case 01-C-1119, regarding the eFax-type services.

The Joint ITCs agree with Verizon that FX service is not synonymous with VNXX because of the physical presence in the foreign exchange, denoted through the local delivery of dial tone, and because of the charges imposed. VNXX, according to the Joint ITCs, is the simple mis-assignment of telephone numbers.

Joint ITCs argue that Staff's well-intended but inadequate proposal should be rejected by the Commission as not in the public interest. Staff's proposal that CLECs may use a VNXX in areas where they serve at least one physically located customer, according to the Joint ITCs, will become a mere entry fee and will not incent a facilities build-out by CLECs. Furthermore, the Joint ITCs aver, the Staff proposal does not conserve numbering resources, does not avoid customer confusion, and does not address the fundamental problem of whether VNXX calls should be considered local.

In order to avoid the problems that gave rise to this docket, i.e., billing customers for calls that they believed were local, Joint ITCs recommend that the Commission should require CLECs to enter into traffic exchange agreements

with ILECs. The Joint ITCs propose that the traffic exchange agreements would provide for exchange of traffic at meet points at the borders of, but within, ILEC service territories. The Joint ITCs recommend that the Commission adopt the NYPSC's requirement that such agreements be executed before any exchange codes are open, as well as the New York holding that ITCs' transport responsibility ends at the border of the ITCs' respective territories.

3. In response to the Commission's request for comment, the ITCs opine that a state is not preempted from establishing a state-wide local calling area for calls dialed to a special NXX. Designating local calling areas is within the jurisdiction of the states, according to the ITCs. However, issues of enforcement and other practical considerations would have to be sorted out in addition to the method of compensation for transport.

### **C. Global NAPs**

1. Global NAPs posits that the Commission lacks jurisdiction over this matter. Global NAPs claims the issue of jurisdiction turns on whether VNXX calls are telephone exchange service or information access service. The FCC's *ISP Traffic Remand Order* determined that ISP-bound traffic is



information access traffic over which the FCC has exclusive jurisdiction. Therefore, Global NAPs contends the Commission has no authority to impose access charges or other limitations on ISP traffic. The pertinent sections of the *ISP Traffic Remand Order* have not been vacated or remanded. Therefore its conclusions remain effective, according to Global NAPs, and an end-to-end analysis remains the pertinent consideration.

2. Global NAPs proposes that a VNXX code, rated local throughout New Hampshire, should be created for the exclusive use of ISPs. Absent such a VNXX code, Global NAPs argues that FX-like calls constitute ISP-bound, information access traffic for which no access charges can be imposed by the Commission.

Global NAPs claims that Verizon offers FX-like calling services to Verizon Online (a Verizon affiliate) customers through its interstate tariff. Global NAPs concurs with Verizon that such service is permitted and may not be regulated by the Commission. Permitting Verizon but not CLECs to provide the service would be discriminatory, according to Global NAPs and, further, using a non-geographic VNXX enhances competition by giving customers competitive access to ISPs other than Verizon's ISP. Global NAPs urges the Commission to follow the path taken by the NYPSC. The NYPSC decided that a VNXX for this purpose is

an efficient method for providing competitive choices in all localities in the state. *Order Arbitrating an Inter-carrier Agreement between Global NAPs, Inc. and Verizon New York, Inc.*, p. 14-15, Case 0-2-C-0006 (May 22, 2002).

Global NAPs also argues that a VNXX call is not a toll call by definition of the TAct. Global NAPs' argument, set out in its Brief at pp. 10-11, is that the TAct defines exchange access as "access to telephone exchange services for the purpose of the origination or termination of *telephone toll services* (emphasis added)." Telephone toll services are those for which a separate charge is made that is not included in contracts with subscribers for exchange service, citing 47 USC §§153(47) and 153(48). According to Global NAPs, access charges can only apply where a separate and additional charge is imposed for a call. Since Global NAPs and other CLECs do not impose a separate charge for FX-like calls, the calls are not toll, nor exchange access, and access charges cannot apply. Global NAPs also argues that FX-like charges do not involve IXC carriers and therefore do not meet the FCC's definition of calls for which access charges apply, as described in the FCC's *Local Competition Order* at 1034. The calls that do fit the definition

might, in theory, provide revenues with which to pay an access charge, according to Global NAPs.

Global NAPs cites to a recent California arbitration report to support its view that the FCC's rule 51.703(b) precludes an ILEC from charging carriers for local traffic that originates on the ILEC's network. Brief, p. 12-13. That arbitration report states that Section 51.703(b) and the FCC's *Kansas/Oklahoma 271 Order* hold that Global NAPs cannot be required to pay for transport on the ILECs' side of the point of interconnection, including transport of VNXX traffic. *In the Matter of Global NAPs, Inc. Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company, Verizon California Inc., Final Arbitrator's Report* (May 15, 2002).

Treating VNXX calls as telephone exchange service is consistent with standard industry practice, according to Global NAPs, including Verizon's practice. The network's identification of the NPA and NXX codes separates toll-rated and local-rated calls, not identification of the physical geographic location of customers. The industry does not look to the street address of the customer and, furthermore, there is no easy way to obtain such information. Therefore, Global NAPs argues,

calls with an NXX that is rated local are local calls, irrespective of the physical geographic location of the customers making the calls.

Global NAPs disputes the claim that carriers would lose revenues as a result of VNXX. Global NAPs asserts that the costs generated with the delivery of local traffic to the Point of Interconnection when a CLEC provisions FX-like services via VNXX are the same as those generated when a CLEC provisions undisputedly local service to a customer physically located in the rate center. In both cases the ILEC carries the call from the originating telephone to the POI, no matter where the CLEC ultimately delivers the call. Nor does the ILEC lose toll revenues, since the traffic would probably not exist at all, according to Global NAPs, if the calls were rated toll. (Brief at 17).

Global NAPs maintains that passing on costs to the consumer for Internet access that does not increase costs to Verizon or the ILEC would inhibit the public's use of the Internet. Global NAPs contends that, if confronted with a toll charge, a customer would be unlikely to make the call. Thus, according to Global NAPs, the Commission should not inhibit

ubiquitous Internet access by imposing a discriminatory access charge on FX-like calls.

Finally, Global NAPs objects to the Staff's proposal for two reasons. First, Global NAPs suggests that Staff's proposal fails to treat calls to ISPs as information access traffic as required by the FCC's decision. Second, Global NAPs claims that the requirement of having at least one customer physically located in each ILEC local calling area amounts to a barrier to entry in violation of Section 253 of the TAct. Public policy, according to Global NAPs, should turn on a more sensible standard.

3. Global NAPs is of the opinion that the Commission may direct LECs, over which the Commission's jurisdiction is clear, to establish an intrastate service with a special NXX code available to carriers serving ISPs at local rates. In fact, Global NAPs urges the Commission to do so, or to indicate its intention to leave to the FCC all matters relating to services purchased by ISPs.

The Commission does not have jurisdiction over ISPs to enforce subscription to such a service, Global NAPs asserts, nor to bar LECs from providing other services to ISPs. Therefore, Global NAPs claims that enforcement is an issue to be considered

further. Finally, Global NAPs contends that inter-carrier compensation for ISP-bound traffic should be governed by the FCC's rulings.

**D. RNK**

1. RNK contends that the treatment of toll calls made to ISPs is outside the Commission's jurisdiction and that jurisdiction lies with the FCC pursuant to its *ISP Traffic Remand Order* issued April 27, 2001. Furthermore, RNK asserts the scope of this docket is limited, pursuant to the Order of Notice issued on October 6, 2000, to whether VNXX calls are local, an issue also decided by the FCC's *ISP Traffic Remand Order*. Therefore, RNK argues, the Commission should not interfere with CLECs' use of all assigned NXXs for that purpose.

2. Putting the jurisdictional issues aside, RNK argues as follows: the use of a non-geographically associated NXX is pro-competitive and efficient; forcing CLECs to duplicate the incumbent's historic network is anti-competitive and inefficient; the TAct requires CLECs to have only one POI within a LATA, so it should follow that ILECs like Verizon have responsibility to bring traffic destined to CLEC NXXs to the CLECs' POIs, reciprocating the CLECs' obligation to bring all originating local traffic from CLEC customers to Verizon's POIs;

the cost of transporting that traffic to the respective POIs should be borne by the originating carrier; and requiring CLECs to also pay for traffic originating from Verizon would be contrary to the TAct, anti-competitive, and unfair.

RNK avers that allowing only incumbents to provide local access to the Internet (via affiliated and customer ISPs) is anti-competitive and discriminatory, unfairly depriving New Hampshire consumers of competitive choice. RNK also speculates, refuting the claim that VNXX will erode toll revenues, that if consumers are forced to pay a toll charge for Internet usage, they will discontinue such usage. Such a policy would also inhibit technological advancement and impede expansion of advanced services availability, a result that is contrary to Section 251(c)(3) of the TAct.

RNK states that the principles embodied in the TAct require two conclusions: (1) all carriers in the competitive market must be afforded equal opportunity to attract and serve all types of customers, and (2) competitors need not duplicate the ILECs' networks. RNK maintains that without VNXX use, the two concepts cannot co-exist: competitors either have to duplicate the network or cannot have equal opportunity. As a result, incumbents gain an unfair competitive advantage. RNK

posits that the relatively small and decreasing marginal cost of hauling traffic a little further is dwarfed by the enhanced and expanded services which VNXX would make available to consumers.

RNK opposes Staff's recommended resolution as falling far short of a fair and equitable resolution for CLECs and the New Hampshire consumers, although it calls it a "good start" by grandfathering existing VNXXs. RNK objects to the 5000 MOU as arbitrary and insufficient to warrant the investment needed. RNK agrees with BayRing that the non-ISP traffic volumes at stake are very low and that CLECs would be effectively run out of business.

3. RNK did not file comments on the issue of federal preemption regarding numbering assignments.

**E. AT&T**

1. AT&T does not address the issue of jurisdiction.

2. Like BayRing, AT&T argues that carriers should be compensated for terminating calls based on the NPA-NXX of the originating and terminating parties. On that basis, AT&T avers, VNXX calls are local calls for which compensation should be paid in accordance with standard industry practice.

Verizon follows standard industry practice for compensation, AT&T claims, when offering traditional FX service



as local exchange service for which the call originator pays Verizon's local charges. VNXX calls (FX-like calls) differ only in that the CLECs do not route the calls via remote dial tone over private line facilities. AT&T points out that Verizon's FX service is offered in its Local Exchange Services Tariff.

AT&T claims the compensation method should be the same and that VNXX calls should not be treated as toll just because of Verizon's legacy rate center locations. Calls are and should be rated as local or toll based on the customer's selected NPA-NXX. Reciprocal compensation should be paid as appropriate to the carrier terminating the calls.

Treating VNXX calls as toll would trigger technical and billing problems, AT&T declares, in that traffic would need to be identified and rated separately.

AT&T also disputes the contention of Verizon and the ILECs that additional transport costs are incurred. According to AT&T, costs to deliver a call to a CLEC do not vary depending on whether the call is destined to a customer in the calling party's native rate center or to a customer in a foreign rate center. Both of those kinds of calls are bound to the same CLEC POI, regardless of the physical location of the CLEC's customer and therefore the cost to Verizon is exactly the same.

AT&T agrees with BayRing and Staff that the revenue losses claimed by Verizon and the ITCs are slight: if the calls were not rated local, the traffic would diminish greatly. The only losses, according to AT&T, result from successful competition against Verizon's similar service.

AT&T rejects Verizon's proposed compensation method for these calls. It would require CLECs to establish additional POIs that are geographically relevant to the Verizon legacy rate center. According to AT&T, this requirement would (1) violate CLECs' right to select a single POI per LATA, (2) go against the structure of the TAct by creating a CLEC obligation to allow interconnection by ILECs at any technically feasible point, and (3) violate the 47 C.F.R. §51.703(b) requirement that originating carriers must bear the costs of delivering their traffic to the POI. Like Global NAPs, AT&T recommends the recent New York and California commission rulings rejecting Verizon's proposal.

AT&T argues that the current carrier compensation regime of access charges and reciprocal compensation is based upon a fundamental principal of "calling party's network pays." Verizon and the ITCs' arguments unacceptably breach this fundamental principal. Further, in accord with Global NAPs'

argument, AT&T asserts that VNXX voice traffic is not a toll service. Therefore, such traffic is not subject to access charges, and is subject to the FCC's rules relating to the payment of reciprocal compensation pursuant to the *ISP Remand Order*.

AT&T objects to the proposals by Verizon and the ITCs relating to ITC/CLEC Interconnection. Verizon's proposal would limit the Transit Service provided to a DS1 volume of traffic. The ITC's proposal would require CLECs to provide transit to the ITCs' serving area boundaries. The proposals, argues AT&T, would impose unfair costs and burdens on CLECs, while securing preferential treatment to the ILECs. AT&T asserts that the equitable and lawful solution is that each originating carrier must be responsible for delivering its traffic to the terminating carrier's network at the point where the terminating carrier's network meets with the network of the transit provider. This system of equal interconnection obligations on both ITCs and CLECs will promote competition and comply with the TAct, AT&T states, citing to the FCC's *Local Competition Order* at ¶1062. (Brief at p. 24, n. 61).

3. AT&T did not file comments on the issue of federal preemption regarding numbering assignments.

**F. Conversent**

1. Conversent does not address the issue of jurisdiction.

2. Conversent would like to use VNXXs to serve its customers but does not do so, it states, because of regulatory uncertainty. Conversent supports the position of Global NAPs that CLECs should be permitted to use VNXXs, rated according to the originating and terminating NXX's assignment to a particular local calling area, not on the geographical location of the customer.

Conversent outlines three possible options for the Commission to resolve this docket. The first would be to rule that CLECs may provide VNXX calls rated according to the originating and terminating NXXs alone. The second would be to apply to VNXX calls the proposed rule limiting the requirement of transport to carrier boundaries. The third would be to rule that CLECs and ITCs should be responsible for bringing their originating local traffic (NXX and VNXX) to terminating CLECs and ITCs. Since these carriers tend to exchange small amounts of traffic, ITCs and CLECs would not charge reciprocal compensation or access charges for terminating local calls. If such traffic exceeds a specified threshold amount or is

excessively one way, the parties should then negotiate an equitable compensation arrangement.

Conversent supports Staff's proposal to establish a 5000 minute threshold for traffic before requiring CLECs to negotiate traffic exchange agreements (TEAs). That threshold is high enough, according to Conversent, to allow a CLEC to target the relevant ITC area rather than negotiating TEAs with each ITC. Conversent believes that holding CLECs and ILECs responsible for bringing their traffic to each other would not be burdensome up to the threshold amount. Under no circumstances, in Conversent's view, should a CLEC be required to pick up transport costs for Verizon's traffic because CLECs, not ILECs, have the right under the TAct to designate the point at which traffic is exchanged.

3. Conversent did not file comments on the issue of federal preemption regarding numbering assignments.

**G. WorldCom**

1. WorldCom does not address the jurisdiction issue.

2. WorldCom agrees with Global NAPs and BayRing that the CLECs' competitive virtual foreign exchange service offerings are substantially similar to that which Verizon has historically offered its customers as FX, a local exchange

service. The similarities between CLECs' VNXX and the incumbent's traditional offering, states WorldCom, have been recognized by the California and Michigan commissions. WorldCom avers that Verizon is trying to squelch competition by burdening CLECs with economically inefficient and legally unjustifiable network demands as well as unreasonable compensation schemes. VNXX calls are legitimate local exchange offerings, WorldCom argues, and CLECs have a right to compensation, with no obligation to pay the originating carrier.

WorldCom argues that federal and state regulators, and the telecommunications industry, have long recognized that traffic is rated and billed according to the originating and terminating NPA-NXX numbers, not the physical location of either the calling or called parties, or the physical route that the call makes to get from one party to the other. Like BayRing and Conversent, WorldCom maintains that if the NXXs of the calling and called parties are listed in the LERG as assigned to rate centers that are in the same local calling area, then the call is local, regardless of the physical location of the parties to the call. For support, WorldCom cites to North Carolina, Kentucky and California decisions. Classifying calls to CLEC FX subscribers as inter-exchange while classifying calls to the

incumbent's FX subscribers as local gives the incumbents an unfair advantage and could precipitate the elimination of competition in New Hampshire, according to WorldCom.

WorldCom maintains that foreign exchange traffic is subject to reciprocal compensation, like other local exchange service. WorldCom finds this conclusion consistent with the purpose of reciprocal compensation, i.e., compensating the terminating carrier for the costs associated with the termination of local traffic that originates on another carrier's network.

Like Global NAPs, BayRing, Conversent, and Staff, WorldCom argues that Verizon and the ITCs do not lose revenue when VNXX calls are rated as local. An originating customer now using VNXX, rated as local, would not make the same call rated as toll, WorldCom contends. Therefore, WorldCom states, Verizon's lost toll revenue argument is without merit. WorldCom also disputes Verizon's claim that CLECs incur no costs of their own to provision FX service. In fact, CLECs incur the cost of end office functions for call termination, according to WorldCom. In addition, WorldCom disputes Verizon's right to impose access charges to local VNXX calls. WorldCom argues that both the Connecticut and California commissions rejected such

attempts as not in the public interest. Alternatively, if Verizon wins its point that VNNX calls are toll, then, WorldCom argues, CLECs should be entitled logically to impose access charges on calls that originate on Verizon's network. Either way, according to WorldCom, CLECs have a right to compensation and no obligation to pay the originating carrier.

WorldCom urges the Commission to reject Verizon's proposed plan as the New York, Massachusetts, and California commissions did, because the proposed plan produces discriminatory cost recovery inconsistent with the TAct.

3. According to WorldCom, federal law would not preempt the Commission from establishing a specific NXX for ISP traffic. The Commission's jurisdiction over the geographic scope of local calling areas is stated in ¶1035 of the First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, (1996). Furthermore, according to WorldCom, the FCC delegated authority to the Commission over numbering administration which includes the action contemplated. However, WorldCom raises questions regarding compensation and technical implementation of an ISP-traffic NXX. WorldCom recommends that



parties participate in a technical session to discuss those issues prior to any Commission action.

#### **H. BayRing**

1. BayRing asserts that the Commission lacks jurisdiction over any aspect of inter-carrier compensation related to the exchange of ISP-bound traffic, pursuant to the FCC's *ISP Traffic Remand Order*. BayRing interprets the FCC order as holding that ISP-bound traffic is information access, regardless of the physical location of the customer. The FCC order also establishes Bill and Keep as the proper inter-carrier compensation for ISP-bound traffic.

BayRing contends that the Commission retains jurisdiction to resolve the issue of inter-carrier compensation for VNNX traffic that is not ISP-bound. BayRing contends that non-ISP-bound traffic is a small, insignificant amount of traffic which does not justify establishing a rule or regulatory regime. Nonetheless, BayRing posits that non-ISP-bound VNNX is subject to the parties' reciprocal compensation obligations. For support, BayRing cites to a Florida Public Service Commission staff analysis, as well as to the FCC's *ISP Traffic Remand Order*.

2. BayRing argues that the physical location of the end-user does not determine whether a call is treated as a local call. BayRing contends that a comparison of the NXX codes, not an examination of the physical location of the end users, determines whether a call is rated as local or toll.

BayRing maintains that CLEC VNXX service is the functional equivalent of ILEC's FX service. Therefore, BayRing argues, because FX service is tariffed as a local exchange service in New Hampshire, CLEC VNXX service should also be considered a local service. As a local service, the payment of reciprocal compensation to the terminating carrier is appropriate, according to BayRing. BayRing opposes the imposition of access charges for VNXX traffic as not in the public interest due to customer confusion.

3. BayRing filed comments on the issue of a specific NXX for ISP traffic jointly with Level 3 (which had not previously participated in this docket). They draw a conclusion that such an action would exceed Commission jurisdiction because number assignment practices are preempted by federal law. They argue that the FCC's delegation, in November 1999, of authority to implement number conservation measures did not specifically include the assignment of an NXX to a specific type of traffic.

In addition, according to BayRing and Level 3, the FCC's subsequent establishment of a national number conservation strategy, by orders issued between 2000 and 2002, superceded any delegated or implied authority.

BayRing and Level 3 also assert that the Commission would have no authority to withhold numbering resources from carriers that otherwise meet the requirements set forth in the Central Office Code Assignment Guidelines, and further, the Commission would be restricted from reclaiming numbering resources.

**I. KMC Telecom V**

Although it did not file a brief or otherwise participate in this docket, KMC filed comments in response to the Commission's inquiry regarding an ISP traffic specific NXX. In KMC's view, the Commission does not have authority to establish a specific NXX for ISP-bound traffic originating and terminating in different calling areas because such action would unduly favor one telecommunications technology over another, violating 47 C.F.R. 52.9(a)(3). Therefore, KMC requests that the Commission enforce such a requirement equally by ensuring that all LECS offering ISP-bound traffic utilize the dedicated NXX.

**J. NHISPA**

Although it did not file a brief or otherwise participate in this docket, NHISPA filed comments in response to the Commission's inquiry regarding an ISP traffic specific NXX. While NHISPA states that the Commission could establish such an NXX without federal preemption as it is permitted to manage its exchanges, NHISPA suggests that federal preemption could occur with regard to direction of such a service.

**K. OCA**

1. The OCA does not address the jurisdictional issue.
2. The OCA supports Staff's proposal to settle the issues presented in this docket. The concerns the OCA raised during the hearing include: (1) the cost impact of VNXX on Verizon and the Joint ITCs, and (2) whether Verizon's provision of a 500- tariff for Internet access could be anti-competitive because it is not available to CLECs. The OCA considers VNXX a beneficial innovation that has emerged from competition (transcript Day 3, page 60).

As an additional reason for supporting Staff's proposal, the OCA challenges Verizon's claim for recovery of costs for providing transport for CLEC VNXX calls in New Hampshire. The OCA asserts that Verizon failed to provide any

evidence supporting its claim, and Verizon's response to a Commission record request on the issue was unresponsive, according to the OCA. Therefore, the OCA claims, Verizon has failed to meet its burden of proof and the Commission should adopt the Staff proposal.

3. The OCA filed brief comments noting that no party has heretofore cited any authority which prohibits a state from assigning an NXX for statewide ISP traffic and that all parties have acknowledged that such numbering assignments are delegated to the states. The OCA concludes that the Commission is free to craft such a solution.

**L. Staff**

1. Staff does not address the question of jurisdiction.

2. According to Staff, the routing of CLEC calls is the same whether the call ultimately terminates in the originating local calling area or in a different local calling area. This claim is supported, Staff avers, by Verizon's testimony and by the Joint Stipulation of Facts. Furthermore, Staff claims, ILEC revenues are unaffected because the demand for the usage would drop dramatically if treated as toll traffic. If treated as local, reciprocal compensation would be

payable to the CLEC for termination, but Staff points out that most of the traffic is Internet traffic and therefore reciprocal compensation payments will be eliminated pursuant to the FCC decision.

VNXX traffic should be considered in light of the FCC's interpretation of the TAct, which, according to Staff, anticipates an evolution of telecommunications traffic. Hence Staff argues that for purposes of carrier compensation, true VNXX traffic, defined as calls to NXX rate centers at which a CLEC has not even one physically located customer, should be treated as toll. Furthermore, Staff argues, true VNXX traffic should be prohibited because of the technical difficulties experienced with rating calls as toll when the NXX indicates the call should be treated as local.

Staff proposes that non-ISP bound VNXX calls be treated as local so long as a CLEC has at least one customer physically located in the exchange to which the NXX is rated. Staff's rationale is, first, that such treatment will not affect ILEC costs or revenues, and second, that it will enhance competition by enabling CLECs to operate without building a switch in every rate center.

In support of the argument, Staff avers that the fact that some portion of the VNXX traffic will be terminated in the same local calling area in which it originates changes the traffic from true VNXX traffic to something else. Staff argues that a CLEC's decision as to where to terminate the call, after the ILEC hands the call off to the CLEC, affects CLEC costs, not ILEC costs.

Staff asserts that ITC transport costs should be dealt with based upon their size. When VNXX traffic is minimal, the ITC should absorb the costs. However, when VNXX traffic exceeds 5000 minutes per month in any direction, carriers should negotiate a TEA regarding compensation. Staff recommends that a team of ITC and CLEC representatives should work with Staff to create a model TEA.

In conjunction with the transport cost solution, Staff recommends that the Commission grandfather the existing VNXX arrangements for existing phone numbers and existing customers. According to Staff, CLECs will eventually serve enough physically located customers to balance the flow of reciprocal compensation. The proposal, according to Staff, will create incentives for some CLECs to provide physically local service

and provide compensation for Verizon for transport between ITCs and CLECs.

3. Staff did not file comments on the issue of federal preemption regarding numbering assignments.

### **III. COMMISSION ANALYSIS**

The dispute over whether VNXX calls are local or toll arises in two contexts: first, inter-carrier reciprocal compensation as required by Section 251(b)(5) of the TAct, and second, disparate customer billing in the retail market. The reciprocal compensation issue is resolved to a large extent by the FCC's *ISP Traffic Remand Order* as discussed below. The billing disparity occurs between ITC customers, who have been billed toll rates for calls to ISPs, and Verizon customers, who are billed at local rates for calls to ISPs with NXXs in the same local calling area. The toll rates were applied by the ITCs because ITCs, unlike Verizon, have no CLEC Traffic Exchange Agreements (TEAs) in place which would have specified different treatment.

Underlying these two disputes, there is an important concern. Verizon and other ILECs are able to offer customers local-rated access to ISPs but CLECs cannot offer local-rated



access in the same manner without heavy expense<sup>2</sup> that may rise to the level of a barrier to market entry. If the ILECs' ability to offer such access is tied to their historic monopoly status, then their competitive advantage is unfair and impermissible. We will confront this underlying concern, resolving the other two considerations, by addressing the extent of our jurisdiction and equal access to dial-up Internet services for customers of Verizon, ITCs, and CLECs.

**A. Extent of Commission Jurisdiction**

At ¶65 of its *ISP Traffic Remand Order*, the FCC reasoned that Section 251(i) of the TAct preserves FCC jurisdiction under Section 201 to establish an inter-carrier compensation mechanism for ISP-bound traffic. The FCC's decision identifies ISP-bound traffic as "information access," a category that the FCC asserts is excluded from the reciprocal compensation requirement of Section 251(b)(5). *Id.* at ¶¶31-47. On appeal, in *WorldCom, Inc. v. FCC*, 288 F. 2d 429, 251 US Appeals 176 (D.C. Cir. 2002), the D.C. Circuit Court of Appeals found that the FCC's reliance on Section 251(g) for authority to remove ISP traffic from the reciprocal compensation requirement

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<sup>2</sup> Unless CLECs incur the expense of placing a switch in every local calling area, thereby duplicating the PSTN, CLECs cannot provide Internet access as a local call outside the local calling area of their POI.

of Section 251(b)(5) was misplaced. However, the court only remanded, but did not reverse, vacate, or stay the FCC's *ISP Traffic Remand Order*. The court explained that the FCC may have other legal bases to support adoption of the rules determined by the FCC. Therefore, the FCC's interim pricing limits continue to apply, along with the FCC's assumption of exclusive jurisdiction over ISP-bound traffic, while the FCC formulates an order on remand. Accordingly, all of the FCC's holdings in the *ISP Traffic Remand Order* remain in effect.

The precise extent of state jurisdiction is best understood in the context of the FCC's several rulings providing for disparate treatment of certain providers, as discussed in the *ISP Traffic Remand Order*. In that order, the FCC pointed out that "since 1983...(we have) exempted enhanced service providers (ESPs), including ISPs, from the payment of certain interstate access charges," instead allowing them to pay local business service rates for interstate access under the "ESP exemption." *Id.* at ¶11 and fn. 18, citing *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order (*MTS/WATS Market Structure Order*), 97 FCC 2d 682 (1983). Therefore, although the FCC has claimed jurisdiction over Internet traffic (meaning that interstate access charges would

ordinarily apply), the FCC allows ISPs to take access service under local tariffs pursuant to the ESP exemption because ISPs are ESPs.

The FCC adopted the ESP exemption to avoid the rate shock that could be experienced by ESPs that had been paying local business service rates for their interstate access. The FCC considered that rate shock might jeopardize ESPs' continued existence and disrupt the provisioning of enhanced services to the public. *Id.* at fn. 18, citing *MTS/WATS Market Structure Order* and also *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*), and *Access Charge Reform Order*, 12 FCC Rcd at 16133. The FCC's policy of nurturing the growth of innovative communications, as demonstrated in the *MTS/WATS Market Structure Order*, can also be seen in its *ESP Exemption Order*, the *Access Charge Reform Order*, and, recently, in the *ISP Traffic Remand Order*, where it states that "the ESP exemption is important in order to facilitate growth of Internet services." *Id.* at ¶29. However, despite its recognition of the importance of the ESP exemption, the FCC also concluded that the payment of reciprocal compensation for ISP-bound traffic distorts the developing competitive market. *Id.*

To counterbalance that distortion, the FCC's *ISP Traffic Remand Order* created a compensation mechanism to reduce opportunities for arbitrage. Further, on the same day it issued its *ISP Traffic Remand Order* the FCC opened CC Docket No. 01-92, *Developing a Unified Inter-carrier Compensation Regime*, by issuing a Notice of Proposed Rulemaking, FCC 01-132.

In determining that reciprocal compensation does not apply to ISP-bound traffic, the FCC looked beyond the classification of ISP traffic as either local or toll. It looked to other provisions of the TAct and found that §251(g) expressly limits the reciprocal compensation requirement of §251(b)(5) to telecommunications other than exchange access, information access, and exchange services for such access, *id.* at ¶¶31-41, and that ISP-bound traffic is information access service. *Id.* at ¶¶42-47.

In sum, for purposes of inter-carrier compensation, the FCC found that ISP traffic is information access service and jurisdictionally interstate. In addition, ISP traffic remains subject to the ESP exemption. Because the FCC determined that inter-carrier compensation for ISP-bound traffic is within its jurisdiction under 47 USCS §201, our consideration of the issues raised in this docket excludes any rulings regarding inter-

carrier compensation for ISP-bound traffic.

**B. Equal Access to Internet Service**

The legacy network, developed by Verizon and the ITCs as the ubiquitous public switched telephone network (PSTN), includes at least one switch in every local calling area. Hence, the ITCs can provide Internet access (information access service) as a local call in their entire service territories and Verizon can provide Internet access (information access service) as a local call to every location in New Hampshire. In comparison, CLECS do not have a switch in every local calling area; instead they have at least one Point of Interconnection in a LATA, i.e., one POI in New Hampshire. Resolution of the dispute before us, as to whether a VNXX call is a local or toll call, will effectively determine whether CLECs must build a complete switched network in order to provide Internet access equivalent to the Internet access provided by Verizon. Even though the TAct does not require or encourage replication of the PSTN by every CLEC, that would be necessary in order for CLECs to provide Internet access equal to Verizon's without the use of VNXX. We find such a result to be inconsistent with the purpose of the TAct, and will fashion a remedy to avoid that result.

## **C. Background**

### **1. Routing**

Historically, the designation of a call as local or toll depended equally on comparisons of the NXXs and of the location of end-users. Certain NXXs were identified with certain towns and with particular local calling areas. Consumers in New Hampshire are known to make calling decisions based on their knowledge that a specific NXX will generate either a "free" call, meaning no additional charge is imposed on top of the basic flat rate for phone service, or a toll call. In fact, in DE 93-003, we approved seven-digit dialing in New Hampshire, removing the toll indicator, the prefix "1," and not converting to ten-digit dialing. *Investigation into New England Telephone's Long Distance Dialing Plan for New Hampshire*, 78 NHPUC 446 (1993). In doing so, we relied, at least in part, on New Hampshire customers' competence in adapting to new calling systems. We noted that "[C]ustomers are required to be ever more sophisticated in their understanding of the choices offered them" and gave them credit for sophistication enough "to know or determine what their local calling areas are" even without the prefix. *Id.* at 456.

Local and toll calls are routed and exchanged between carriers today as described in testimony and in the December 2000 Stipulation of Facts. The parties agree that the routing of traffic is determined based on the NXX codes of the calling and called end-users. The NXX codes are matched to the specific V&H coordinates of particular rate centers by an electronic process. (We note that the advent of Local Number Portability has introduced an electronic data dip using the entire telephone number and not just the NXX to determine the routing of most calls.)

When a call is carried entirely on a single ILEC's network, routing occurs as follows. The routing of a local call is processed by a single switch when the end-users are each connected to the same end office. When the end-users are not connected to the same end office, the routing of a local call can take one of several paths. For purposes of examining the local-toll relationship, the relevant paths are: (1) over a direct interoffice trunk to the called end-user's end office<sup>3</sup>, and, (2) where a direct interoffice trunk route does not exist, over an interoffice trunk to a tandem switch that connects to another interoffice trunk to the called end-user's end office.

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<sup>3</sup> As used here, an end office is the switch to which the end user is physically connected.

Individual carriers choose whether or not to install a direct interoffice trunk, and thus avoid using Verizon's tandem, based on such factors as cost of transport, volume of traffic, available facilities, distance, and cost of switching.

For intraLATA toll traffic, carried entirely over an ILEC's network, routing is similar to the routing of inter-switch local traffic as described above.

When multiple networks are used to carry a call the routing of the call varies depending on whether a CLEC is involved. For calls between only ITCs and Verizon, local traffic is either directly trunked to the Verizon end office or to the Verizon tandem. Verizon and the ITC both provide interoffice facilities from each switch to an agreed-upon meet-point on the border between their respective geographic territories (the so-called mid-span point). Both local and toll traffic are routed on the same interoffice facilities. Whether a call is rated as local depends on the location, defined by the NXX, of the calling and called end-user.

When a CLEC network is involved, both local and toll traffic is exchanged at Points of Interconnection (POIs). A call, whether local or toll, from a Verizon caller to a CLEC



customer can be directly trunked to the CLEC POI or, as happens more often, it can travel via a Verizon tandem to the CLEC POI. From the POI, the CLEC sends the call to its called customer. A call from an ITC caller to a CLEC customer is routed to the Verizon/ITC mid-span point, then to a Verizon tandem, and then on to the CLEC's POI from which the CLEC delivers the call to its customer. A call from a CLEC caller to either a Verizon or an ITC customer simply moves in the opposite direction over the same routes.

## **2. Rating**

Inter-carrier compensation for traffic exchange has been and is often governed by agreements between carriers. Historically, for local calls between customers of two carriers, the carrier whose customer initiates the local call (the originating carrier) typically compensates the carrier that terminates the call (the terminating carrier) for using the terminating carrier's network. For toll calls, a toll carrier pays compensation, i.e., terminating access, to the local carrier for using the local carrier's network to deliver the toll call. In the case of toll-free calls, e.g., 800 NXX calls, the terminating carrier pays compensation, i.e., originating access, to the local carrier for using the local carrier's

network to originate the call.

For the service of transporting and terminating EAS traffic between their switches, Verizon and some ITCs pay on the basis of trunks and mileage, pursuant to historical EAS agreements which we will now call Traffic Exchange Agreements (TEAs). Verizon and other ITCs pay on the basis of bill and keep, with each carrier paying for its facilities to the mid-span point.

Prior to commencement of this docket, there were no TEAs between ITCs and CLECs. Since the commencement of this docket, the ITCs and CLECs have been compensating each other for the service of transporting and terminating local traffic on the basis of bill and keep, pursuant to an interim stipulation that this order will supercede. Under the interim stipulation, Verizon does not charge the ITCs for tandem transit and the CLECs do not charge the ITCs for reciprocal compensation.

Verizon and the CLECs pay for the service of transporting and terminating traffic based on the terms of Interconnection Agreements. The Interconnection Agreements provide that for local calls the originating carrier will pay the terminating carrier reciprocal compensation.

#### **D. Other State Commission Rulings**

A number of states have determined the toll or local status of VNXX calls. Some state commissions have decided that VNXX calls may be designated as local calls, with all the attendant compensation consequences, although some deny reciprocal compensation, and some have decided the reverse. Earlier this year, moreover, the FCC Wireline Competition Bureau (WCB) issued a decision rejecting Verizon's argument that local calls should be rated according to their geographical end points, finding that a determination that a call is local in Virginia is based upon a comparison of NXX assignments, and that Verizon had failed to propose a workable method for rating calls based on geographical end points. *Petitions of WorldCom, Inc. and Cox Virginia Telecom, Inc and AT&T Communications of Virginia for Preemption of the Jurisdiction of the Virginia Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249, and 00-251, DA 02-1731 at ¶¶288-302 (July 17, 2002) (*WCB Virginia Arbitration Award*). On the other hand, on September 5, 2002, the Public Utilities Commission of Ohio (Ohio) concluded differently in an arbitration award, determining that a call is defined as local

based on Verizon's local exchange areas. *Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 02-876-TP-ARB (September 5, 2002). Ohio held that CLECs may establish one POI per LATA but that Verizon may charge its TELRIC rate to transport VNXX traffic beyond a local calling area to a distant POI in another local calling area, provided the call does not originate and terminate in the same local calling area. Ohio determined that inter-carrier compensation for VNXX calls is based on the geographic end points of the calls, *id.* at 10, based on one of Ohio's Local Service Guidelines (LSGs). Ohio's LSG IV. C. states in pertinent part:

As [CLECs] establish operations within individual ILEC service areas, the perimeter of ILEC local calling areas, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation.

The Ohio LSG is the appropriate authority for determining the demarcation of inter-carrier compensation for all non-ISP bound local calls, Ohio found, since the FCC's *Local Competition First Report and Order* specifically authorizes state commissions to define local calls for inter-carrier compensation purposes. *Id.* at 10, fn. 13. While Ohio analogized to the *WCB*

*Virginia Arbitration Award* in order to clarify and explain its award, it rejected an argument that it should rule consistent with the *WCB Virginia Arbitration Award*, agreeing with Verizon's argument that it is not controlling authority. *Id.* at p. 6, fn. 9 and p. 10.

#### **E. Conclusions**

This consolidated docket was impelled by growing ISP traffic which brings benefits at the same time it strains the industry's usual definitions and interactions. Pursuant to the *ISP Traffic Remand Order*, as discussed above, ISP traffic is information access traffic and not local exchange access traffic; it evades traditional definition as either local or toll. It is treated as local under the ESP exemption from toll access charges, but it is jurisdictionally interstate.

We will deal with this ISP-bound data traffic in a manner that promotes the public interest by fostering competition in a non-discriminatory marketplace. LECs wishing to carry information-access traffic outside of traditional local calling areas without incurring toll charges for the end user shall do so by using specific NXX blocks which will have statewide extended area service (EAS). This practice will serve the public interest by separately identifying federal

jurisdictional traffic and state jurisdictional traffic and by creating an unconstrained pathway to information access. The process we intend to implement, as described below, is within our authority to direct the manner in which our jurisdictional telephone utilities serve their customers. See RSA 374:26. Arguments to the contrary about our jurisdiction are irrelevant, as we do not rely upon the authority delegated by the FCC for numbering conservation actions and we do not attempt to exercise authority over ISPs.

We direct Staff to work with NANPA and the LECs to arrange for specified NXX blocks having statewide EAS, such service to be known as information access NXX (IANXX) service, that will be used only for information access traffic. All ISPs will be able to purchase IANXX service from any carrier. Carriers shall provide IANXX service only for information access traffic. Carriers shall obtain certification from their customers that such numbers will be used only for Internet-bound traffic. We will, as necessary, audit the carriers' certifications, and, in the event of an investigation, a carrier must demonstrate that, to its knowledge, the IANXX service was used as intended.

Inter-carrier compensation, i.e., terminating access, originating access, and reciprocal compensation, for this traffic will be governed by the FCC. Charges for transport between Verizon and CLECs will also be governed by the FCC. We note that our ruling applies to ISP-bound data traffic not to Internet telephony. Inasmuch as the issue of Internet telephony has not been brought before us, we decline to rule on it at this time.

Authorizing IANXX service, we believe, will assist in our efforts to optimize numbering resources and thereby serve the public interest. While it is true that several NXX blocks may be placed into service for the purpose, it is likely that there are NXX codes already open with available thousands-blocks for such use. It is also probable that this solution may enable some carriers to return NXX codes or thousands-blocks.

While we cannot require ISPs using existing number assignments to convert to IANXX service, calls to information access numbers that use VNXX will be treated differently in the future, as described below. Some ISPs may want to migrate to NXXs obtained out of the IANXX blocks. We find that any short-term inconvenience to ISPs and their customers, created by changing current information access service numbers to the

specified NXX blocks, in such cases, is outweighed by the benefits achieved.

Current number assignments in use by ISPs may be converted to IANXX service over the next six months, with the transition to be completed by May 1, 2003. ISPs may have both their current numbers and their IANXX numbers in operation concurrently for a period of 60 days to facilitate the transition for their customers.

As for non-ISP bound traffic, it shall continue to be defined as local or toll by the physical location of end-users. NXX codes currently in use for non-ISP bound traffic will remain associated with particular geographic areas. Going forward, a CLEC may offer FX-like service for non-ISP bound traffic only when it is providing service to at least one customer physically located in the exchange from which the FX service is requested. For this purpose, the CLEC must be providing local dial tone via its own facilities, over an EEL arrangement or by using UNE loops. This requirement ensures that the use of VNXX will not grow disproportionately, in the manner predicted by Verizon, and that the requirement itself does not rise to the level of a barrier to entry. Carriers must certify to the Commission that use of a VNXX in any rate center comports with the requirement



of a physically-located customer. For VNXX blocks currently in use, carriers shall provide such certification before May 1, 2003. We direct Staff to develop the process for this certification, as well as for certifying future NXX block assignments and any ongoing changes in certification that may occur.

Effective May 1, 2003, all NXX blocks being used for VNXX, i.e., those NXX blocks that have not either been certified as FX-like or converted to IANXX, shall be rated to the rate center where the traffic is delivered under an irrebuttable presumption that the traffic is non-ISP traffic, except for traffic that originates in the same local calling area as the CLEC POI and exceeds the 3:1 ratio set out by the FCC in its *ISP Traffic Remand Order*. In the case of CLECs, all such codes shall be rated to the rate center where the POI is located. In crafting an overall approach to VNXX calls, we will not grandfather existing VNXX use. All carriers must abide by the system we here enunciate. Before obtaining new NXX blocks, carriers will be required to demonstrate readiness to serve customers physically located in a particular exchange, within six months of requesting the NXX blocks. Further, although CLEC local calling areas need not mirror the ILEC local calling

areas, reciprocal compensation or access charges for non-ISP traffic will be assessed in accordance with the ILEC local calling areas.

Our approach to VNXX calls will affect companies like Global NAPs that provide numbering resources to internet facsimile companies (fax by e-mail) and have no customers physically located in the state. Under our overall system, as long as such calls are permitted in New Hampshire, such calls will be toll calls unless they originate in the local calling area of the POI rate center where the calls are handed off to the CLEC. As determined in Order No. 23,454 in DT 00-001, Number Conservation Measures, 85 NH PUC 320 (2000), the issue of whether this use of numbering resources is in the public interest still remains. We will institute a full investigation of that issue, which has been awaiting the outcome of this docket.

Regarding transport costs charged to the ITCs by Verizon for delivery of CLEC-bound traffic, we recognize that both ITCs and CLECs have incentives not to negotiate TEAs that would determine responsibility for those transport charges. Therefore, we direct that those transport costs, in the absence of a TEA, shall be handled as follows. For traffic exchanged

between any single CLEC and any single ITC in any direction, the ITC will pay Verizon tandem transit costs for up to 5,000 minutes of traffic per month (as measured by Verizon), an amount we consider to be *de minimis*. Once the traffic exceeds that amount, the ITC and the CLEC shall each pay one half of the transport and tandem transit costs for all traffic (including the initial 5000 minutes) until they reach agreement on a TEA. We direct Staff to work with ITCs and CLEC representatives to draft a model TEA for the purpose.

Based upon the foregoing, it is hereby

**ORDERED**, that NXX Blocks shall be specifically identified and assigned by carriers for information access traffic (IANXX service); and it is

**FURTHER ORDERED**, that NXX Blocks for IANXX service shall have statewide extended area service; and it is

**FURTHER ORDERED**, that carriers shall obtain and maintain certifications from their customers using IANXX numbers, showing that such numbers will be used only for Internet access; and it is

**FURTHER ORDERED**, that the transition of currently assigned numbers to IANXX assignments will be completed by May 1, 2003; and it is

**FURTHER ORDERED,** that during the transition carriers may provide ISPs with service via both old and new numbers concurrently for a period of up to 60 days; and it is

**FURTHER ORDERED,** that CLECs may offer FX-like service for non-ISP bound traffic only where they have at least one customer physically located in the exchange from which the FX-like service is requested; and it is

**FURTHER ORDERED,** that CLECs must certify to the Commission their eligibility for providing FX-like service for non-ISP bound traffic by May 1, 2003; and it is

**FURTHER ORDERED,** that Staff will develop procedures for the certification of CLEC exchanges eligible to use FX-like service; and it is

**FURTHER ORDERED,** that effective June 1, 2003, all uncertified CLEC VNXX codes shall be rated to the CLEC Point of Interconnection; and it is

**FURTHER ORDERED,** that before obtaining new NXX blocks, carriers shall be required to demonstrate readiness to serve, within 6 months, customers physically located in the requested exchange; and it is

**FURTHER ORDERED,** that reciprocal compensation or access charges shall be due for non-ISP bound traffic in

accordance with the ILEC local calling areas; and it is

**FURTHER ORDERED,** that each ITC shall bear the cost of the transport and tandem transit for traffic exchanged with any CLEC, until such traffic exceeds 5000 minutes per month; and it is

**FURTHER ORDERED,** that each ITC shall share the transport and tandem transit costs equally for all traffic exchanged with any CLEC, once such traffic exceeds 5000 minutes per month, unless and until the CLEC and the ITC reach agreement on a Traffic Exchange Agreement; and it is

**FURTHER ORDERED,** that the Commission Staff shall work with ITC and CLEC representatives to draft a model Traffic Exchange Agreement.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Adele E. Leighton  
Assistant to the Executive Director